

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(Crl) No. 30/2024

**Dilawar Singh alias Makhan
Aged 40 years
S/o Sh. Harnam Singh
R/o Kunjwani H. No. 1,
Street No. 1,
C/o Cheskha Restaurant**

.....Appellant(s)/Petitioner(s)

Through: Mr. Virender Bhat, Advocate

Vs

**1. Union Territory of J&K
Th. Commissioner Secretary,
Home Department, Civil Sectt.
Srinagar.**

2. Senior Superintendent of Police, Jammu.

**3. Station House Officer,
Police Station Gangyal, Jammu.**

..... Respondent(s)

Through: None

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
JUDGMENT
(31.05.2025)

01. Heard.

02. The petitioner, a permanent domicile of UT of J&K, is a businessman and claims to be possessing movable as well as immovable property and is also said to be an income tax payee.

03. On two previous occasions, the petitioner came to be implicated into two criminal cases both of which have resulted in

his acquittal from the competent criminal court of law which judgments have attained finality as is borne out from annexure-II and III to the writ petition.

04. By reference to these two annexures, the learned counsel for the petitioner submits that the petitioner cannot be referred to be a person of bad antecedents so as to suffer continuing entry of his name in surveillance registers No. 9 and 10 of the Police Station, Gangyal whereas at any given point of time and day, the petitioner, by purported reference to his entry in the said two registers, the Police Station, Gangyal sends for him on one pretext or other which is not only embarrassing and inconvenient to him as in attending the Police Station he is to ignore his personal as well as professional engagements and occupation but also injuring his personal as well as social reputation in the society and therefore, the cause of action for the petitioner to come forward with the present petition filed on 15.04.2024 to which the respondent No. 3-SHO, Police Station Gangyal, Jammu in particular, till date has not filed reply despite being given a last and final opportunity in terms of an order dated 29.04.2025.

05. The matrix of right to dignity, privacy and reputation is an inherent extension of fundamental right to life and liberty of a citizen of India which he/she is entitled to guard against any adverse action without any basis in law from the end of the State,

its institutions, authorities and its individual functionaries which includes Police Station/Police Officials as well. Reputation of an individual is an insegregable facet of his right to life with dignity is a poignant observation of the Hon'ble Supreme Court of India in para 35 of its judgment in the case of **"S. Nambi Narayanan Vs Siby Mathews," 2018 AIR (SC) 5112.**

06. The petitioner's concern that he is being reckoned to be a person of bad antecedents by the Police Station Gangyal, Jammu by purported case of his name being still retained and entered in the Register No. 9 and 10 which is a continuing violation of his fundamental right to reputation as well as also to personal liberty.

07. Given the fact that no response has come forth from the end of the respondents, it means that the respondents are not in denial of the fact that the petitioner's name stands entered and continues to be so in the Register No. 9 and 10 of Police Station, Gangyal, be it with or without basis.

08. Mr. Virender Bhat, learned counsel arguing for the petitioner comes forward drawing reliance from the following judgments:-

- (a) In the case of **"Gobind Vs State of Madhya Pradesh," 1975 AIR (SC) 1378**, the Hon'ble Supreme Court of India came to examine the validity of surveillance vis-à-vis invasion of right of privacy

and personal liberty. **Paras 25 and 33** of said judgment is reproduced hereunder:-

“25. Rights and freedoms of citizens are set forth in the Constitution in order' to guarantee that the individual, his personality and those things stamped. With his personality shall be free from official interference except where a reasonable basis for intrusion exists. 'Liberty against government" a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy.

33. When there are two interpretations, one wide and unconstitutional, the other narrower but within constitutional bounds, this Court will read down the overflowing expressions to make them valid. So read, the two regulations are more restricted than counsel for the petitioner sought to impress upon us. Regulation 855, in our view, empowers surveillance only of persons against whom reasonable materials exist to induce the opinion that they show a determination, to lead it life of criminal in this context being confined to such as involve public peace or security only and if they are dangerous security risks. Mere Convictions in criminal cases where nothing gravely imperials safety of society cannot be regarded as warranting surveillance under this Regulation. Similarly, domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security and not routine follow-up at the end of a conviction or release from prison or at the whim of a police officer. In truth, legality apart, these regulations ill-accord with the essence of personal freedoms and the State will do well to revise these old police regulations verging perilously near unconstitutionality.”

(b) In the case of “**Malak Singh Vs State of Punjab and Haryana,**” 1981 AIR (SC) 760, the Hon’ble Supreme

Court of India came to deal with the Punjab Police rules related to entry of persons named in surveillance register. In **paras 8, 9 & 10**, the Hon'ble Supreme Court of India came to deal with the nuisance of maintenance of surveillance registers.

Paras 8, 9 & 10 are reproduced as under:-

“8. The entry in the surveillance register is to be made on the basis of the material provided by the history sheet whose contents, by their very nature have to be confidential. It would be contrary to the public interest to reveal the information in the history sheet, particularly the source of information. Revelation of the source of information may put the informant in jeopardy. The observance of the principle of natural justice apart from not serving the ends of justice may thus lead to undesirable results. We accordingly hold that the rule *audi alteram partem* is not attracted.

9. But all this does not mean that the police have a licence to enter the names of whoever they like (dislike?) in the surveillance register; nor can the surveillance be such as to squeeze the fundamental freedoms guaranteed to all citizens or to obstruct the free exercise and enjoyment of those freedoms; nor can the surveillance so intrude as to offend the dignity of the individual. Surveillance of persons who do not fall within the categories mentioned in Rule 23.4 or for reasons unconnected with the prevention of crime, or excessive surveillance falling beyond the limits prescribed by the rules, will entitle a citizen to the Court's protection which the court will not hesitate to give. The very rules which prescribe the conditions for making entries in the surveillance register and the mode of surveillance appear to recognize the caution and care with which

the police officers are required to proceed. The note following R. 23.4 is instructive. It enjoins a duty upon the police officer to construe the rule strictly and confine the entries in the surveillance register to the class of persons mentioned in the rule. Similarly R. 23.7 demands that there should be no illegal interference in the guise of surveillance. Surveillance, therefore, has to be unobtrusive and within bounds.

10. Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not may be entered. It is only in the case of this category of persons that there may be occasion for abuse of the power of the police officer to make entries in the surveillance register. But, here, the entry can only be made by the order of the Superintendent of Police who is prohibited from delegating his authority under Rule 23.5. Further it is necessary that the Superintendent of Police must entertain a reasonable belief that persons whose names are to be entered in Part II are habitual offenders or receivers of stolen property. While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register it may become necessary in some cases to satisfy the Court when an entry is challenged that there are grounds to entertain such reasonable belief. In fact in the present case we sent for the relevant records and we have satisfied ourselves that there were sufficient grounds for the Superintendent of Police to entertain a reasonable belief. In the result we reject both the appeals

subject to our observations regarding the mode of surveillance. There is no order as to costs.”

(c) In the case of **“Shyambabu Verma Vs State of M.P. and others,” 1996 CrLJ 2696**, the High Court of Madhya Pradesh came to deal with the case of a person who was acquitted in a criminal case but was aggrieved of being kept under surveillance over him and history sheet being maintained with respect to him with the Police Station Sabalgarh. Learned Single Judge of the High Court of Madhya Pradesh dealt in detail with the legal position on the subject. In **para 10** the Court came across with the following take which is reproduced hereunder:-

“10. From the above mentioned decisions it becomes apparent that in these matters:-

- (i) principles of natural justice are not attracted;
- (ii) regulations permitting surveillance do interfere with the personal freedom and should be recorded to only where public peace or security is involved;
- (iii) mere convictions in criminal case where nothing gravely imperils safety of society cannot be regarded as warranting surveillance under these regulations.

Some of the ideals dealing with human rights would remain ideals only because the State in its endeavour to protect the fabric of social life has to resort to imposing of some restrictions and if these restrictions are reasonable then no grievance can be made. The European Convention of Human Rights

makes a brave attempt to bring out this problem. Article 8 of the Convention which came into force on 3rd September, 1953 and as noticed in 'Privacy and Human Rights' Ed - A.H. Robotson. 176 be noticed:-

1. Every one has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a 'democratic society in the interests of national security public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."

(d) In case titled **"Sunkara Satyanarayana Vs State of A. P.," 2000 CrIj 1297** of the Andhra Pradesh High Court, a case of a truck driver with respect to whom a history sheet was being maintained in the Police Station came under examination. The learned Single Judge of Andhra Pradesh High Court came to generate questions involved in the case in **para 8** and then dealt in a detailed manner with all the legal facets attending the subject. **Para 8** of said judgment is reproduced hereunder:-

"(8) In view of the submissions made by the learned counsel the points that arise for consideration are:-

(i) whether right to privacy is not violated, if the citizen is subjected to life-long surveillance by virtue of continuation of history sheet/rowdy sheet in the police station?

(ii) whether violation of the fundamental right to privacy flowing from article 21 of the constitution of India amounts to violation of human rights and what are the other remedies available to the citizen if human rights are violated?

(iii) whether continuous maintenance of history sheets/rowdy sheets perennially does not violate the rights of the citizen under articles 14, 19 and 21 of the constitution of India?

(iv) what is the extent and scope of judicial review of history sheet/rowdy sheet on the touch stone of reasonableness, arbitrariness and non - application of mind? (v) is there a necessity for the competent police officer to record reasons of his own, for extension or retention of the history sheet/rowdy sheet? or is it sufficient legal compliance for the police officer to endorse the report of the station house officer or circle officer, as the case may be? (vi) to what relief?"

In para 23, the learned Single Judge came to appreciate the affects of surveillance on the life of a person. **Para 23** is reproduced hereunder:-

“23. Surveillance by the police makes very serious inroads into the life of a person. It even grossly violates the right of persons to privacy. Obtrusive surveillance does not leave a citizen alone. With the subtle methods of telephone tapping, telescope

watching, remote controlled audio and video recording gadgets, a citizen subjected to surveillance can never have mental peace and thus his life and liberty at every movement would be restricted. A person with lot of restrictions cannot be expected to lead to a dignified life and exercise his right to liberty and other freedoms. A citizen's life would become miserable. Such a situation is worse than animal existence. For these reasons can it be said that there is a 'right' against surveillance?"

In **para 24**, the learned Single Judge came to deal with the constitutionality of the provisions authorizing the police to keep surveillance on the citizens. **Para 24** is reproduced hereunder:-

“(24) The constitutionality of the provisions authorizing the police to keep surveillance on citizens for various reasons has come up before the courts in the past. The legality of the orders passed by the police authorities to open history sheets leading to keeping a watch on the persons have also been challenged before the law courts.”

In **paras 41, 42, 43, 44 & 45**, the learned Single Judge came to examine the nature of right to privacy of the citizens which are reproduced hereunder:-

“(41) Therefore, it shall have to be taken as well settled by a catena of judgments of the supreme court that international covenants and treaties like universal declaration of human rights, 1948, international covenants on civil and political rights, 1966, international covenant on economic, social and cultural rights, 1966 to which the India is signatory have to be read into various articles in

part iii of the constitution of India guaranteeing fundamental rights. The objection of the state that specific covenant in the international treaties are not made applicable to Indian legal system because of the negative endorsement made by India at the time of signing the treaty, was rejected by the supreme court in d. K. Basu's case (supra) when it was held that the reservations of India have now lost relevance in view of the law laid down by the supreme court in number of cases.

(42) The Hon'ble Supreme Court from Kharak Singh's case (supra) to telephone tapping case (supra) recognized right to privacy as a penumbral right to life and liberty guaranteed under art. 21 of the Constitution of India. In Govind' case (supra) it is held that when breach of right to privacy is alleged the same has to be examined with care. The right can be denied only when important countervailing interest is shown to be superior. Even in telephone tapping case the Supreme Court held that whether the right to privacy has been infringed in a given case would depend on the facts of the said case. What is the context of right to privacy? it is useful to extract the following passage from the judgment of Rajagopal's case (supra) :

"the right to privacy as an independent and distinctive concept originated in the filed of tort law, under which a new cause of action for damages resulting from unlawful of privacy was recognized. This right has two aspects which are but two faces of the same coin ;1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and 2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental

invasion. The first aspect for this right must be must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising or non advertising purposes or for that matter, his life story is written whether laudatory or otherwise - and published without his consent as explained hereinafter. In recent times, however this right has acquired a constitutional status. "

(43) Therefore, right to privacy though not an enumerated fundamental right, is constitutionally recognized enforceable right flowing from art. 21 of the Constitution. Invasion of this right gives cause of action for tortuous liability besides right to enforce through constitutional courts. In this context the principle laid down by the supreme court in Kharak Singh's case, Govind's case and Malak Singh's case with reference to police surveillance and violation of right to privacy may be noticed.

(44) In Kharak Singh's case (supra) the Supreme Court held that unless specifically authorized by law, it is constitutionally impermissible to invade the privacy of an individual violating art. 21 of the Constitution. The supreme court held as follows:

"the position therefore is that if the action of the police which is the arm of executive state is found to be infringed any of the freedoms guaranteed to the petitioner, the petitioner would be entitled to the relief of mandamus which he seeks to restrain the state from taking action under the regulations. "

(45) The above statement of law of the Supreme Court followed a finding that regulation 236 of the u. P. Police regulations are non statutory execution instructions framed for the guidance of the police.

Therefore, if the action of the respondents herein proved to result in obtrusive surveillance, the same is liable to be restrained by mandamus.”

In **para 49**, the learned Single Judge came to hold that maintaining of history sheet/rowdy sheet for a long-time violates not only right to privacy under article 21 but also other fundamental rights under articles 14 & 19 of the Constitution of India.

The learned Single Judge in **para 64** came to acknowledge that a remedy under article 226 of the Constitution of India is available to a person whose right to privacy is violated by criminal trespass committed by the Police: **Paras 64 & 65** are reproduced hereunder:-

“(64) Therefore, if a person complains that his right to privacy under article 21 of the constitution is violated by criminal trespass committed by the police as part of unconstitutional surveillance the person has the following remedies :

- 1) by way of a proceeding under article 226 or 32 of the constitution of India for judicial review of the police action and for appropriate relief;
- 2) to initiate criminal action against the officers responsible for criminal trespass subject to other provisions of code of criminal procedure, 1974;
- 3) to seek damages in tort by filing a civil suit and

4) to also seek appropriate compensation in a public law jurisdiction from the court of judicial review under article 226 or 32 of the constitution which is in addition to the traditional remedies.

(65) An inevitable question of far-reaching importance as indicated hereinafter arises before this court in the context of remedies for violation of human rights. Protection of human rights act, as already noticed, defines human rights as rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants enforceable by courts in India. Right to privacy under article 21 of the constitution is a human right as has been noticed supra as being penumbral right under article 21 of the constitution r/w article 17 of the international covenant on civil and political rights, 1966. Under section 30 of the human rights act, the state government with the concurrence of the chief justice of the high court is empowered to specify for each district a court of session to be a human rights court to try the offences arising out of violation of human rights.”

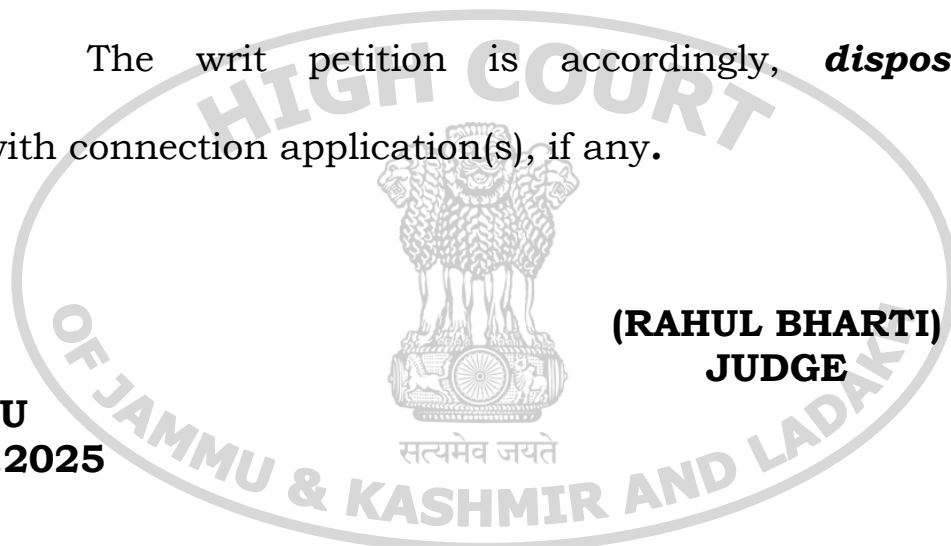
The learned Single Judge came to pose a question in **para 84** of the judgment as to whether the police should be permitted to retain the history sheet of the petitioner by reference to the legal position noticed in the said judgment and in **para 89** came to hold that obtrusive surveillance on the petitioner in the said case violated right to life and liberty under article 21 of the Constitution of India.”

09. Bearing in mind the legal position so settled on the subject, this Court allows the writ petition and directs the SHO Police Station Gangyal, Jammu to strike- out/remove the name of the petitioner if still obtaining in the Register No. 9 and/or 10 of the Police Station, Gangyal with immediate effect.

10. The petitioner to provide a certified copy of this judgment to SHO Police Station Gangyal, Jammu, whereupon the needful compliance be carried out by SHO Police Station, Gangyal within a period of one week.

11. The writ petition is accordingly, **disposed of**, alongwith connection application(s), if any.

JAMMU
31.05.2025
SUNIL



(RAHUL BHARTI)
JUDGE

Whether the judgment is speaking : **Yes**

Whether the judgment is reportable : **Yes**